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SUPREME COURT-NEW YORK COUNTY.

THE NATIONAL GRAMOPHONE CORPORATION,

Plaintiff,

-against-

THE AMERICAN TALKING MACHINE COMPANY,

Defendant.

Original

SUMMONS & COMPLAINT.

WALDO G. MORSE,
Attorney for Plaintiff,
No. 10 Wall St.,
New York, N.Y.

JAN 19 1900

No. 1.

W. Reid Gould, Law Blank Publisher and Stationer,
139 Nassau Street, 120 and 346 Broadway, N. Y.

S U P R E M E C O U R T .

THE NATIONAL GRAMOPHONE CORPORATION,

against

Plaintiff

THE AMERICAN TALKING MACHINE COMPANY,

Defendant.

Trial desired in
New York County.

Summons.

To the above named Defendant :

You are hereby Summoned to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, Judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, December 7, 1899.

Waldo G. Morse Plaintiff Attorney

Post Office Address and Office, No. 10 Wall Street,

Bor. Manhattan.

New York, N. Y.

Folio 1.

SUPREME COURT-NEW YORK COUNTY.

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THE NATIONAL GRAMOPHONE CORPORATION

Plaintiff, :
:

-against- :
:

THE AMERICAN TALKING MACHINE COMPANY, :
Defendant. :
:

-----X

The Plaintiff for its complaint in the above entitled action, by Waldo G. Morse, its attorney, respectfully shows to the Court:

- " 2. I. That the plaintiff is a corporation organized under and by virtue of the laws of the State of New York, and that the defendant is a corporation organized, existing, being and doing business under and by virtue of the laws of the state of New York, and that both plaintiff and defendant are by law authorized to engage, and are engaged, in the business of owning, dealing in and selling talking machines and machines for the reproduction of sound.
- II. That at the times hereinafter mentioned and for more than three years prior thereto the plaintiff, and those to whose rights, interests and business it succeeded, were engaged in the conduct of such business in the City of New York.
- " 3. III. That such business and all similar ones are and were of recent origin and developement and largely controlled, influenced and shaped in their conduct, development and rights by patents of the United States of America upon various and sundry appliances, devices and processes useful and advantageous therein and in connection with and the operation of such machines, which said fact was

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well known to the parties hereto and to those dealing with them, and that the rights and privileges of the plaintiff in, to and under such appliances, methods and patents were, and were known to defendant. to be, essential to the conduct and prosecution of its said business and to the continuance of its said trade with its various customers, of whom it had many.

" 5.

IV. That on or about the 24th day of November, 1899, the defendant maliciously and voluntarily made and caused to be published and distributed among such dealers and customers of plaintiff, and especially the firm of W. H. Hambler, one of said dealers in the City of New York, his agents and employees, the following false and defamatory statement concerning plaintiff and concerning its business:

"Cable Address:

"Twineast, New York. AMERICAN TALKING MACHINE CO.

"A.B.C.Liebers Hunt-

"ing and private code Manufacturers of the

"used.

"

NEW VITAPHONE.

"Telephone: 1825 John. New process Red Disk Records.

"

Made under License and protection of
AMERICAN GRAPHOPHONE CO.

"

"

New York, November 24, 1899.

"Mr. W. H. Hambler,

"

172 Broadway, N. Y.

"Dear Sir:-

In reference to your not feeling equal to the occasion of handling our Vitaphone on account of your fear of patent litigation, will state, that evidently matters

" 6.

"have been misrepresented to you. The facts are these:

"

The American Graphophone Co. started suit against the National Gramophone Co. a year ago, and Judge Lacombe of

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"U.S. District Court, decided that the Gramophone infringed
"our patents and issued an injunction against the National
"Gramophone Co. They then went into court and made affida-
"vits that as they might lose over a million dollars by
"being shut off so quickly, they wished that the court would
"give them a chance for a final hearing, as in the meantime
"they could make preparations to manufacture a machine
"which would not infringe our patents; the judges consider-
"ed this fair and dissolved the injunction, and the matter
"is now up to the final hearing. In the meantime, however,
"it is evident to every one in the trade that they must con-
"template complete defeat, inasmuch as Mr. Berliner, who
"claims to be the inventor of the Gramophone, has taken
"out patents on a machine which does away with the
"mechanical parts, patents which are owned by the American
"Graphophone Co., so in our opinion if you are running any
"chances about being sued for handling an infringing
"machine, you are taking the biggest chances in selling
"the Gramophone. A. G. Spaulding & Bros. and Ingersoll
"& Bros., threw out the Gramophone on this account.

" We should like very much to have you handle our goods
"and will protect you in every way in the sale of them.

" Yours truly,

" AMERICAN TALKING MACHINE COMPANY.

" 9.

V. - That the facts contained in said statement were
wholly false; that by reason of the aforesaid publication
plaintiff has been injured in its reputation, good name,
business and credit, and likewise and in like manner by
reason of the premises various customers of plaintiff

declined and refused to purchase and pay for its said goods and wares, and it became and was unable to sell and dispose of the same to such customers to its damage in twenty-five thousand dollars.

WHEREFORE Plaintiff demands judgment against the defendant for the sum of Twenty-five Thousand (25,000) Dollars besides the costs of this action.

WALDO G. MORSE,
Attorney for Plaintiff,
No. 10 Wall Street,
Bor.Man. New York City, N.Y.

State of New York,
County of New York, ss:

Orville D. LaDow, being duly sworn, says that he is the Secretary and General Manager and an officer of the National Gramophone Corporation, the corporation plaintiff in the above entitled action. That the foregoing complaint is true to the knowledge of this deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That the reason why this verification is not made by the plaintiff is because the plaintiff is a corporation; and the grounds of deponent's belief as to all matters in said complaint, not stated upon his knowledge, are investigations which deponent has caused to be made concerning the subject matter of this action, and information acquired by deponent in course of his duties as an officer of the corporation plaintiff in this action.

Sworn to before me, this 7th:
day of December, 1899.

Emil J. Fuess
Notary Public #89
New York Co. N.Y.

Orville D. LaDow